

This Opinion is Not a
Precedent of the TTAB

Mailed: March 18, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Panacea Financial LLC
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Serial No. 88947690
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Kimberly D. Logue and Jamie Fugitt of PPGMR Law, PLLC,
for Panacea Financial LLC.

Bridget A. McCarthy, Trademark Examining Attorney, Law Office 125,
Heather Biddulph, Managing Attorney.

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Before Kuhlke, Greenbaum and Pologeorgis,
Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Panacea Financial LLC (“Applicant”) seeks registration on the Principal Register for the mark PANACEA FINANCIAL (FINANCIAL disclaimed) in standard characters for services ultimately identified as:

Banking services; Banking and financing services; Financial advisory and consultancy services, namely, creating personalized strategies for achieving financial independence for medical and healthcare professionals; Financing and loan services; Loan origination services specializing in personal and commercial loans for medical and healthcare professionals; Financing loans for medical and healthcare professionals; Issuing credit cards;

Mortgage refinancing; Mortgage banking services, namely, origination, acquisition, servicing, securitization and brokerage of mortgage loans; Student loan services, in International Class 36.¹

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, when used in connection with the identified services, so resembles the registered mark PANACEA VENTURE (VENTURE disclaimed) in standard characters for:

financial services, namely, venture capital investment firm services targeted at investments in companies in the healthcare and life sciences fields, in International Class 36,²

as to be likely to cause confusion.

When the Section 2(d) refusal was made final, Applicant appealed and briefs have been filed. We affirm the refusal to register.³

I. Likelihood of Confusion

When the question is likelihood of confusion, we analyze the facts as they relate to the relevant factors set out in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) ("*DuPont*"). See also *In re Majestic Distilling Co.*,

¹ Application Serial No. 88947690, filed on June 4, 2020, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an allegation of an intention to use the mark in commerce.

² Registration No. 5822437, issued on July 30, 2019.

³ Citations to TTABVUE throughout the decision are to the Board's public online database that contains the appeal file, available on the USPTO website, www.USPTO.gov. The first number represents the docket number in the TTABVUE electronic case file and the second represents the page number(s).

Citations to the examination record refer to the USPTO's online Trademark Status and Document Retrieval system (TSDR).

315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We consider each *DuPont* factor for which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the services. *See In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.”); *see also In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all [*DuPont*] factors for which there is record evidence but ‘may focus . . . on dispositive factors, such as similarity of the marks and relatedness of the goods [or services].’”) (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

A. Similarity/Dissimilarity of the Marks

We compare the marks in their entireties as to “appearance, sound, connotation and commercial impression.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *DuPont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John's*, 126 USPQ2d

1742, 1746 (TTAB 2018), *aff'd mem.*, 777 Fed. Appx. 516 (Fed. Cir. 2019) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

Our analysis cannot be predicated on dissecting the marks into their various components; that is, the decision must be based on a comparison of the entire marks, not just part of the marks. *In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). *See also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”). However, “in articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties.” *In re Nat'l Data*, 224 USPQ at 751.

The marks PANACEA FINANCIAL and PANACEA VENTURE begin with the identical word PANACEA. The additional words in the respective marks FINANCIAL and VENTURE are, at a minimum, merely descriptive and appropriately disclaimed. As such, they have limited source identifying significance. Disclaimed matter that is descriptive of or generic for a party's goods or services is typically less significant or less dominant when comparing marks. *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997)). Further supporting the dominance of the word PANACEA in each mark is the location as the first part of the marks. The first

word in the marks, PANACEA, is clearly the more dominant source identifying element in the marks. *See In re Detroit Ath. Co.*, 128 USPQ2d at 1049 (finding “the identity of the marks’ two initial words is particularly significant because consumers typically notice those words first”); *Palm Bay Imps. Inc.*, 73 USPQ2d at 1692 (“Veuve” is the most prominent part of the mark VEUVE CLICQUOT because “veuve” is the first word in the mark and the first word to appear on the label); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (upon encountering the marks, consumers will first notice the identical lead word); *Presto Prods. Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“[I]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered.”).

Applicant argues that, although the additional wording is merely descriptive, it still serves to distinguish the marks because of the difference in length and cadence, and the difference in connotation. Applicant asserts VENTURE is descriptive of Registrant’s venture capital investment services in contrast to the word FINANCIAL in Applicant’s mark connoting “common, everyday financial services, such as banking, checking accounts, and home loans.” 4 TTABVUE 19. Despite the difference in appearance and any possible specific difference in connotation between investment and financial, we do not find these differences sufficient to overcome the identical nature of the source-identifying term located in the first position in each mark.

We bear in mind that the “marks ‘must be considered . . . in light of the fallibility of memory.’” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1085 (Fed. Cir.

2014) (quoting *San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 196 USPQ2d 1, 3 (CCPA 1977)). While a close side-by-side comparison of the marks could reveal the slight differences between them, that is not the proper way to determine likelihood of confusion, as that is not the way customers will view the marks in the marketplace. *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018); *see also In re Solar Energy Corp.*, 217 USPQ 743, 745 (TTAB 1983) and cases cited therein; *see also Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1470 (TTAB 2016); *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1089 (TTAB 2016).

In terms of appearance, sound, connotation, and commercial impression, we find the similarity of the marks — considered in their entireties — outweighs their dissimilarities. In view thereof, the similarity of these marks weighs in favor of a finding of likelihood of confusion.

B. Relatedness of the Services, Trade Channels, Classes of Consumers and Conditions of Sale

When considering the services, trade channels, classes of consumers and conditions of sale, we must make our determinations based on the services as they are identified in the application and cited registration. *See In re Dixie Rests. Inc.*, 41 USPQ2d at 1534. *See also Stone Lion Capital Partners, L.P. v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Houston Computer Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). The issue is not whether the services will be confused with each other, but rather

whether the public will be confused as to their source. *See Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods [or services] in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods [or services].”).

It is sufficient that the services of Applicant and Registrant are related in some manner or that the conditions surrounding their marketing are such that they are likely to be encountered by the same persons under circumstances that, because of the marks used in connection therewith, would lead to the mistaken belief that they originate from the same source. *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471, 1476 (Fed. Cir. 2000). We further observe that when the marks of the respective parties are highly similar, as they are here, the relationship between the goods and/or services need not be as close to support a finding of likelihood of confusion. *Cf. In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202 (TTAB 2009); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1636 (TTAB 2009).

Registrant’s services are venture capital investment firm services targeted at investments in companies in the healthcare and life sciences fields. Applicant has various financial services, including: banking and financing services; Financial advisory and consultancy services, namely, creating personalized strategies for achieving financial independence for medical and healthcare professionals; Financing and loan services; Loan origination services specializing in personal and commercial

loans for medical and healthcare professionals; Financing loans for medical and healthcare professionals.

Applicant focuses on the nature of their respective services to distinguish them:

In short, venture capital investment firms like Panacea Venture are “professional, institutional managers of risk capital” that take active operating roles for long periods of time in the companies that they invest in. *Id.* at p. 23. In particular, Panacea Venture’s exclusive partnership-type services along with its focus on specific technology companies, results in a customer base that is small and exceptionally sophisticated.

In contrast, Applicant, like most banks, does not offer hands-on equity investments such as venture capital. Instead, Panacea Financial offers traditional banking and lending activities such as home loans, credit cards, and deposit accounts that ordinary individuals will likely seek from a bank or financial institution in their lifetime. Further, the customer base to which the Applicant’s services are marketed and offered consists of physicians and other qualified medical professionals. ... Therefore, Applicant’s potential purchaser base is also small and comprised of highly-educated, sophisticated individuals.

4 TTABVUE 9.

The Examining Attorney argues that Applicant’s “banking and financing services” and “financing and loan services” encompass all types of banking and financing services and all types of financing and loan services, including Registrant’s “venture capital investment firm services targeted at investments in companies in the healthcare and life sciences fields” because venture capital investment is a subset of financing. To support this proposition the Examining Attorney submitted evidence in the form of printouts of third-party websites set forth below as summarized in the brief:

- Investopedia, Investopedia.com, indicating that venture capital is a “type of financing that investors provide to startup companies and small business...Venture capital generally comes from well-off investors, investment banks, and any other financial institutions.”
- National Venture Capital Association, nvca.org, showing that venture capital firms provide funding and investments to startups, companies, projects, etc.
- CB Insights, cbinsights.com, defining venture capital as a “financing tool for companies and an investment vehicle for institutional investors and wealthy individuals. In other words, it’s a way for companies to receive money in the short term and for investors to grow wealth in the long term.”

6 TTABVUE 11-12.⁴

We further take judicial notice of the following definitions for the words “financing” and “venture capital”:

Financing: 1 the act of obtaining or furnishing money or capital for a purchase or enterprise, 2 the funds so obtained;⁵

Venture Capital: 1 funds invested or available for investment in a new or unproven business enterprise.⁶

⁴ See January 7, 2021 Response, TSDR at 15-24 (National Venture Capital Association <https://nvca.org>) and February 9, 2021 Final Action, TSDR at 38 (CB Insights www.cbinsights.com) and 62 (Investopedia www.investopedia.com).

⁵ [dictionary.com/browse/financing](https://www.dictionary.com/browse/financing), retrieved March 11, 2022, based on RANDOM HOUSE UNABRIDGED DICTIONARY (2022). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

⁶ [Dictionary.com/browse/venture-capital](https://www.dictionary.com/browse/venture-capital), retrieved March 11, 2022, based on RANDOM HOUSE UNABRIDGED DICTIONARY (2022).

In addition, the Examining Attorney asserts that “even if Applicant’s services were not considered to encompass the Registrant’s services, the services provided by both Applicant and Registrant are commonly provided by the same entity and marketed under the same mark.” 6 TTABVUE 12. The Examining Attorney relies on several third-party websites and registrations set forth below as summarized in the brief:

- Bank of Ann Arbor, offering banking services and financial consulting services to technology and life science companies, mortgage loans, commercial financing, **private banking**, and **venture capital services**
- Capital One, offering **venture capital services**, as well as, traditional **banking services**, **issuing credit cards**, **loan services**, healthcare financing, etc.
- Lead Bank, offering **banking services**, mortgage services, **issuing credit cards**, **venture banking**, etc.
- Pacific Western Bank, offering **personal banking services**, as well as, **venture lending services** and financial consulting in the life science and medical field
- SVB, Silicon Valley Bank, offering **banking services for companies**, **issuing credit cards**, **global banking services**, **lending**, **startup banking**, **venture funded banking**, etc.
- Wells Fargo, offering traditional **personal banking services**, **student loans**, **mortgages**, **issuing credit cards**, **venture capital services**, **financing services**, financial advisory and consultancy services, etc.
- Registration Number 2372827, for the mark “H&Q”, identifying a variety of financial services under the

mark including but not limited to **venture capital services, merchant banking services and investment banking services.**

- Registration Number 2617798, for a design mark, identifying a variety of financial services under the mark including **venture capital investment services, and investment banking services.**
- Registration Number 2925055, for the mark “THE POWER TO HELP YOU SUCCEED” identifying a variety of financial services under the mark including but not limited to **venture capital services, mortgage lending and loan services,** financial investment in the field of funding agreements, and capital investment consultation.
- Registration Number 3843200, for the mark “RLJ,” identifying a variety of financial services under the mark including but not limited to **venture capital investment management,** investment advisory services, banking services, **checking and savings account services,** financial analysis, advice, consultation, planning and management, **debit card and credit card services,** mortgage banking and lending services, and loan financing.
- Registration Number 4979165, for the mark “RAZORHORSE CAPITAL,” identifying a variety of financial services under the mark including but not limited to **venture capital investment,** financing services [namely, private equity fund and venture capital investment services], and **finance consulting services.**
- Registration Number 5279081, for the mark “OMNIARCH,” identifying a variety of financial services under the mark including but not limited to **investment banking services,** secure lending services, **financial advisory and consulting services, and venture capital services.**
- Registration Number 5728833, for the mark “HIGHGUARD,” identifying a variety of financial services under the mark including but not limited to

venture capital investment services, loan and financing services, and investment banking services.

- Registration Number 6173481, for the mark “BROAD OAK,” identifying a variety of financial services under the mark including but not limited to **venture capital investment funding, and investment banking services.**
- Registration Number 6129472, for the mark “GREEN CIRCLE”, identifying a variety of financial services under the mark including but not limited to **investment banking services, merchant banking services, and venture capital investment.**
- Registration Number 6032688, for the mark “UPPER90,” identifying a variety of financial services under the mark including but not limited to **venture capital financing, credit and loan services, and financing of loans.**

6 TTABVUE 12-15.⁷

Applicant argues that the respective services are “narrowly tailored and there is no overlap between the two” asserting that Applicant “offers traditional banking services to physicians and other medical professionals.” 4 TTABVUE 12-13. However, only certain of Applicant’s services are limited in this manner; Applicant’s “banking and financing services” and “financing and loan services” are not limited or narrowly tailored. *In re Midwest Gaming & Entm’t LLC*, 106 USPQ2d 1163, 1166 (TTAB 2013) (finding that, because a semicolon separated the two relevant clauses in registrant’s identification, its “restaurant and bar services” is a discrete category of services that stands alone and independently as a basis for likelihood-of-confusion analysis, and is

⁷ See February 9, 2021 Final Action, TSDR at 2, 74.

not connected to nor dependent on the services set out on the other side of the semicolon). We may not read limitations into the identifications based on actual use.

Based on the website evidence and broad definition of the word “financing,” we find that “venture capital investment firm services” is encompassed by Applicant’s identified “banking and financing services” and “financing and loan services.” It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of services within a particular class in the application. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014).

Moreover, here, where some of the services are legally identical (financing services encompasses venture capital services) and there are no limitations as to channels of trade or classes of purchasers for those services in the application, we must presume that Applicant’s and Registrant’s services will be offered in the same channels of trade and will be bought by the same classes of purchasers, at least as to Registrant’s narrower channel of trade. *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion).

In addition, we find persuasive the Examining Attorney’s evidence that consumers are accustomed to seeing banking and venture capital services offered under the same mark. Applicant argues the examples of third-party use consist of a “set of umbrella

‘house marks’ that are largely from the financial industry’s largest multi-entity, multi-division, conglomerate companies” and “this small, highest tier of companies generally offer all financial products and services through one or more of their respective subsidiary or affiliated entities and divisions.” Reply Brief, 7 TTABVue 3-4. Applicant compares this type of evidence to large retail stores such as Walmart and Amazon which would not serve to show the relationship between guns and apples despite the fact they sell both goods. *Id.* We agree that the financial services industry has many services that may or may not be related; however, Applicant’s identification includes the broad description of “financing services” and the evidence not only serves to show consumer expectation but also corroborates that “financing services” includes the more specific form of venture capital.

Applicant also takes issue with the third-party registrations contending that although they may include key words “venture” or “financial” none of them include both “traditional banking services” and “venture capital services.” *Id.* at 4. However, Applicant’s identification of services, by including financing services, includes services that encompass more than simply “traditional banking services.”

Applicant points to a non-precedential Board opinion involving “hedge funds for high net worth individuals and entities” and “commercial lending services for the commercial mortgage and financial asset management industries” where the Board reversed a refusal under Section 2(d) finding significant differences between the nature of the services and high level of sophistication of purchasers. *In re Bridger Management, LLC*, Serial No. 78516349 (December 28, 2007). Non-precedential

opinions are not binding on the Board; moreover, we are not persuaded by this opinion inasmuch as the facts and record in that proceeding (hedge funds v. lending) are very different from this one where Applicant's identification includes the broad wording "financing services." *In re Tapio GmbH*, 2020 USPQ2d 11387, at *10 n.30 (TTAB 2020). Moreover, as is often stated, each case must stand on its own record. *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) ("The Board must decide each case on its own merits.").

Applicant is correct in the observation that the financial industry is a broad industry and that "Courts have concluded that the fact that 'two products or services fall within the same general field ... does not mean that the two products or services are sufficiently similar to create a likelihood of confusion.'" 4 TTABVUE 11 (quoting *Matrix Motor Co. v. Toyota Jidosha Kabushiki Kaisha*, 290 F. Supp.2d 1083, 1092 (2003), *aff'd* 120 Fed. Appx. 30 (9th Cir. Cal. 2005) (citing *Harlem Wizards Entm't Basketball, Inc. v. NBA Props.*, 952 F. Supp. 1084, 1095 (D.N.J. 1997)). Nonetheless we find the evidence submitted by the Examining Attorney to be persuasive. The third-party websites show use of a single mark in connection with various investment and financial services from a variety of financial institutions. These examples of third-party use show that in the context of the marketplace, consumers are exposed to the same mark used for the respective services, including all types of financing, indicating a single source for both. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1203-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1272-73 (TTAB 2009) (website evidence shows same or overlapping channels of trade).

They also show various banking and financing services, including venture capital services, offered on the same website under the same mark in overlapping channels of trade. *Id.*

Applicant argues that “Confusion is unlikely where the products and services are sold to and used by distinct groups of purchasers and customers within those institutions.” 4 TTABVUE 15. Here, however, in view of the legal identity in part of the services we must presume Applicant’s and Registrant’s services are offered to the same purchasers. Moreover, even excluding venture capital services from Applicant’s financing services, the customer base overlaps – the same customers could look for loan financing or venture capital.

In terms of conditions of sale, Applicant argues that its identified services are not offered to the general public. In fact, many of Applicant’s services are not limited to a specific type of consumer. However, Registrant’s listed services, which are targeted to consumers for venture capital firm services in the healthcare and life sciences field, would be limited to both investors and those seeking venture capital financing in those fields. Such consumers would exercise a higher level of care.⁸ However given the highly similar marks and legally identical in part services, we find this factor does not outweigh the other factors.

⁸ See February 9, 2021 Final Office Action, TSDR at 66 (www.investopedia.com describing venture capital investment process).

II. Conclusion

In sum, we hold that, despite a higher level of care in the overlapping consumers, because the marks are highly similar, the services are legally identical in part and related, and the trade channels and classes of consumers overlap, confusion is likely between Applicant's mark PANACEA FINANCIAL and Registrant's mark PANACEA VENTURE.

Decision: The refusal to register Applicant's mark is affirmed under Trademark Act Section 2(d).